

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
(317) 232-9855

FISCAL IMPACT STATEMENT

LS 6645

BILL NUMBER: HB 1116

DATE PREPARED: Feb 6, 2002

BILL AMENDED: Feb 5, 2002

SUBJECT: IURC Authority.

FISCAL ANALYST: John Parkey

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FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State

Summary of Legislation: (Amended) This bill repeals current provision granting the Indiana Utility Regulatory Commission (IURC) enforcement powers over utilities and replaces it with provision authorizing the IURC to impose civil penalties of up to \$5,000 or \$15,000 on public utilities other than telephone companies that provide local service for violations of or noncompliance with utility statutes, rules, and orders. The bill requires the civil penalties to be: (1) deposited in the Commission Public Utility Fund account; (2) refunded directly to customers; or (3) awarded to another utility harmed by the violation or noncompliance.

The bill permits the Attorney General to recover attorney fees in successful actions. The bill authorizes the IURC to order a utility to provide service in emergency situations. The bill authorizes the IURC to require a public utility to post a reasonable performance bond before operating.

The bill provides that the IURC has jurisdiction over purchases of: (1) clean coal technology; (2) mergers of public utilities, utility companies, and holding companies of public utilities and utility companies; and (3) merchant power plants, except for a plant that has petitioned the IURC before March 1, 2002, for an order that the IURC decline to exercise its jurisdiction over the plant.

The bill requires the Commission to issue an order not later than 135 days after a petition for approval of a merger is filed.

The bill requires a merchant power plant to give notice of a proposed facility to property owners within one half mile of the proposed facility and to hold a field hearing to determine local support for the facility. The bill provides that after the field hearing, a majority of the property owners may request a hearing before the IURC. The bill requires the IURC to issue written findings based on testimony at the hearing. The bill establishes the criteria the IURC must consider when considering a merchant power plant application, including preferred siting locations. It provides that when considering whether to approve a plant, the IURC

must obtain a recommendation from the Department of Natural Resources (the "Department") regarding the plant's planned use of and potential effect on a water resource. The bill requires a merchant power plant to provide to the IURC and the Department an assessment, prepared by a licensed geologist or engineer, of its effect on the water resource and its users. The bill requires a merchant power plant that seeks: (1) approval from the IURC; or (2) alternative regulation by the IURC; to establish proof of financial responsibility in an amount determined by the IURC. The bill requires the IURC to issue a decision either approving or denying a merchant power plant's petition for approval or for alternative regulation not later than eighteen months after the date of the petition. The bill lists the duties of the merchant power plant following approval by the IURC. It provides that if a merchant power plant that has received IURC approval: (1) fails to commence construction of the plant within two years of the date of the IURC's approval; or (2) has not substantially completed construction of the plant within five years of the date of the IURC's approval; the IURC may revoke its approval of the plant. The bill provides that the IURC may decline to exercise jurisdiction over a facility that has applied to the IURC before March 1, 2002. It specifies that the IURC has jurisdiction over a merchant power plant that has made a significant alteration in the labor used to construct or remodel the facility.

Effective Date: (Amended) Upon Passage; July 1, 2002.

Explanation of State Expenditures: (Revised) *IURC Merger Jurisdiction:* This bill increases the authority of the IURC over mergers, reorganizations, or the acquisition of control of certain public utilities as well as certain transactions involving clean coal technology. While this bill will expand the IURC's authority and potentially increase the number of hearings held by the IURC, any impact on the Commission is expected to be absorbed using its current budget and resources. The Office of the Utility Consumer Counselor (OUCC) would also participate in any utility merger approval proceedings. Any additional cost to the OUCC is also expected to be covered using existing personnel and resources.

IURC Merchant Power Plant Jurisdiction: This bill places merchant power plants under the jurisdiction of the IURC. Under this proposal, a new merchant power plant would be required to petition the IURC for approval to construct the facility. The bill requires the IURC to consider the following when reviewing a plant's petition: location, need, financing, reporting requirements, a plant's impact on utility suppliers and customers, and recommendations from the Department of Natural Resources. The bill also requires the Commission to establish rules and standards related to a potential plant's closure. The IURC is required by this bill to give preference to brownfield sites, sites of existing plants, or other sites identified for power plant or heavy industrial development in local land use plans.

The bill also requires the IURC to exercise jurisdiction over exiting merchant power plants if the operators of a facility do not use contractors, subcontractors, or work crews who have not completed a jointly administered labor and management program approved by the United States Department of Labor's Bureau of Apprenticeship Training.

Depending on the number of facilities that seek regulatory approval, this bill is expected to increase the administrative costs of the IURC. However, any increases in the IURC's administrative costs are expected to be absorbed using existing staff and resources. The bill requires the IURC to rule on a petition within 18 months after it has been filed.

IURC Enforcement Authority: This proposal extends the IURC's fining and enforcement authority over regulated gas and electric utilities. The proposal would give the IURC the ability to: impose civil penalties, issue cease and desist orders, and modify permits issued by the Commission. The IURC is expected to be

able to absorb any additional administrative costs associated with this proposal.

Attorney General's Office: The proposal also authorizes the Office of the Attorney General to bring an action to enforce an order of the Commission. While this provision may increase the Attorney General's costs, it allows the Office to recover costs if the state prevails in the action.

DNR: The bill requires the Department of Natural Resources (DNR) to make a recommendation to the IURC regarding a proposed merchant power plant's planned use of and its potential effect on water resources. The bill allows the Department to make its recommendation based on a specified assessment provided by the petitioning power plant or through the Department's own activities. The impact of this bill on the DNR will depend on the number of powerplants that petition the IURC and on the specific requirements of each site.

Background on IURC and OUCC Funding: The operating budgets of the IURC and OUCC are funded by regulated utilities operating in Indiana. The IURC determines the rate at which to bill the utilities based on the two agencies' budgets, less reversions, divided by the total amount of gross intra-state operating revenue received by the regulated utilities for the previous fiscal year. Based on this formula, utilities are currently billed approximately 0.10% of their gross intra-state operating revenues to fund the IURC and OUCC. In FY 2001, fees from the utilities and fines generated approximately \$8.6 M.

Background Information on Merchant Power Plants: As of August 2001, there were seven merchant power plants operating in Indiana. Six plants have petitions currently under review with the IURC.

Explanation of State Revenues: (Revised) *IURC Enforcement Authority:* Under this bill, the IURC could impose a civil penalty of up to \$5,000 for the first violation or act of noncompliance by an utility and \$15,00 for the second and subsequent violations. Fines collected under this provision would be directed to:

- 1) customers of the violating utility, if the violation directly impacts ratepayers;
- 2) another utility, if the violation directly harms another utility; or
- 3) the IURC for public interest projects, if the violation neither directly impacts ratepayers or harms another utility.

It is not known in how many instances the IURC would impose monetary penalties

Explanation of Local Expenditures:

Explanation of Local Revenues:

State Agencies Affected: Indiana Utility Regulatory Commission; Office of the Utility Consumer Counselor; Office of the Attorney General; Department of Natural Resources.

Local Agencies Affected:

Information Sources: Mike Leppert, Executive Director, IURC, (317) 232-2714; Indiana Utility Regulatory Commission, *2000-2001 Annual Report*.